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ADP National Account Services
Outsourcing for HR, Benefits and Payroll

Tech Flex

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ESSENTIALS

CHANGES TO FSA AND HSA RULES PROPOSED

On May 26, 2011, legislation was introduced in the United States Senate by Senator Orrin Hatch (R-UT) to modify some current rules applicable to Health Savings Accounts (HSA) and Flexible Spending Accounts (FSA). In addition, an identical companion bill was introduced in the United States House of Representatives (R-MN). If enacted as now written, Senate Bill 1098 (S. 1098) and House Bill 2010 (H.R. 2010) titled the Family and Retirement Health Investment Act would result in the following modifications to the current HSA and FSA rules.

- Allow a husband and wife over the age of 55 and not enrolled in Medicare to make catch-up contributions to the same HSA up to the amount of $2,000 (currently the limit is $1,000).

- Rescind the new restrictions on the use of HSA and FSA dollars for the purchase of over-the-counter (OTC) drugs and medicines unless the OTC drug or medicine is prescribed by a health care provider and in accordance with applicable state law.

- Allow individuals to carry forward up to $500 of unused funds from their FSA accounts to the following plan year. Currently all unused funds are forfeited to the plan sponsor.

- Clarify the preventive care prescription drugs that will not be subject to an HSA-eligible plan deductible.

- Allow for the purchase of a high-deductible health plan, COBRA continuation coverage and qualified long-term care insurance with HSA dollars.

- Allow individuals enrolled in Medicare Part A to continue contributing to their HSAs.

If enacted, the legislation “shall apply to taxable years beginning after the date of the enactment of this Act.”

For a copy of S. 1098 and H.R. 2010, please clicks on the links provided below.

S. 1098

H.R. 2010

MODIFICATIONS TO HIPAA PRIVACY RULE PROPOSED

The Department of Health and Human Services (HHS) through the Office of Civil Rights (OCR) has published proposed rules to modify the Privacy Rule under the Health Insurance Portability and Accountability Act (HIPAA) in relation to the accounting of disclosures of protected health information (PHI). The stated purpose of the proposed rule issued on May 31, 2011, is in part to implement the Health Information Technology for Economic and Clinical Health Act (HITECH) requirement for covered entities and business associates to account for disclosures of PHI to carry out treatment, payment and health care operations if the disclosures are made through an electronic health record (EHR).

It is important to note that the OCR proposal includes an expansion of accounting requirements to give individuals a right to receive an access report for uses and disclosure of electronic PHI in a designated record set. In addition, it is proposed that the right to an access report would be applicable to all electronic PHI held in a designated record set, not just to PHI included in an EHR. Consequently, all covered entities and business associates will be required to provide access reports rather than just covered health care providers who maintain PHI in an EHR.

Current Privacy Rule Disclosure Accounting Rules

Under the current Privacy Rule, covered entities are required to provide an individual who requests an accounting of certain disclosures of PHI made six years prior to the request. This accounting must include all disclosures of PHI, other than those pertaining to types of disclosures that are specifically excluded, including those to carry out treatment, payment and health care operations. The current rules apply to disclosures of paper and electronic PHI whether or not the information is contained in a designated record set, as defined under HIPAA as follows:

> "a group of records maintained by or for a covered entity that is: (i) the medical records and billing records about individuals maintained by or for a covered healthcare provider; (ii) the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or (iii) used, in whole or in part, by or for the covered entity to make decisions about individuals."

An accounting may include disclosures to and from a covered entity's business associates. Under the terms of business associate agreements, business associates are required to make available information on applicable disclosures in order for a covered entity to provide a proper accounting to the requesting individual.

Changes to the Current Privacy Rule Required by HITECH

HITECH Act provides that the accounting of disclosures exemption for disclosures to carry out treatment, payment and health care operations no longer applies to disclosures made through an EHR and an individual has the right to receive an accounting of disclosures made up to three years prior to the request. In addition, HITECH requires covered entities to provide individuals with either an accounting of the business associate's disclosures or a list of all of its business associates with contact information. The effective date of HITECH requirements for covered entities that have acquired an EHR after January 1, 2009, is January 1, 2011, or the date that the covered entity acquires an EHR, whichever is later. For covered entities that acquired an EHR prior to January 1, 2009, the effective date is January 1, 2014. However, the HHS is permitted to extend these dates to no later than January 1, 2013, and January 1, 2016, respectively.

OCR Proposed Rules Overview

The OCR proposed revisions to the Privacy Rule would in effect divide "it into two separate rights for individuals. Specifically (1) an individual right to accounting of disclosures and (2) an individual's right to an access report (which would include electronic access by both workforce members and persons outside the covered entity."

According to the OCR, the access report would provide an individual with information on who has accessed his/her electronic record set. For example, an individual can discover if a specific person has accessed his/her electronic designated record set. The right to accounting would provide an individual with information on disclosures of designated record set information, in either paper or electronic form, to persons outside of the covered entity or its business associate for specific purposes. For example, an individual can discover if their PHI was disclosed for law enforcement reasons.

Brief Summary of the OCR Proposed Rules

Accounting of Disclosures

- **Limit the scope of the accounting provision to only the PHI in a designated record set.** Consequently a covered entity would only be required to account for disclosure of PHI made from the record sets used by a covered entity to make decision concerning the individual.

- **Include a direct reference to business associates** so that covered entities must include accounting information for all appropriate disclosures, including those by its business associates that create, receive, maintain or transmit designated record set information. However, the proposed rule limits the

accounting information to be reported by business associates to information held by the business associate within a designated record set.

- **Change the accounting period from six years to three years.** Under the current Privacy Rule, covered entities and business associates must account for disclosures for a period of six years prior to the individual's request for an accounting. HITECH provides an individual right to receive an accounting of treatment, payment and health care operations EHR disclosures for a three year period prior to disclosure request. In its proposal, the OCR stated the following:

  "We believe that it is appropriate to maintain a consistent accounting time period for all types of disclosures. Accordingly, our proposal aligns the accounting period for all types of disclosures with the three-year period set forth in section 13405(c)(1)(B) of the HITECH Act. Additionally, based on our experience to date, we believe that individuals who request an accounting of disclosures are generally interested in learning of more recent disclosures (e.g., an individual is seeking information on why she has recently begun to receive information related to her health condition from a third party). Therefore, we do not believe that it will be a significant detriment to individuals to reduce the accounting period from six years to three years. In contrast, we believe it is a significant burden on covered entities and business associates to maintain information on six years of disclosures, rather than three years."

- **Provide a list of the types of disclosures that are subject to the accounting requirement.** Currently the Privacy Rule provides a list of the disclosures types that are exempt from disclosure reporting. The OCR proposes to include disclosures for: (1) public health activities (except disclosures to report child abuse or neglect reports); (2) judicial and administrative proceedings; (3) law enforcement purposes; (4) to avert a serious threat to health or safety; (5) military and veterans activities; (6) Department of State's medical suitability determinations; (7) government programs providing public benefits; (8) and for workers' compensation. It is important to note that under the proposed OCR rules, the disclosures currently listed as exempt from accounting would continue to be so. For example, disclosures to carry out treatment, payment and health care operations would continue to be exempt for paper records. However, individuals would be able to receive information by means of an access report for all access to electronic PHI in a designated record set related to treatment, payment and health care operations.

- **Proposed OCR rules would modify the content requirements for disclosure accounting.** Currently, it is required that an accounting disclosure must contain the date of the disclosure, name and if known the address of the recipient, a brief description of the protected health information disclosed and a brief statement of the purpose of the disclosure. First, under the proposed rules, a covered entity or business associate would only need to provide an approximate date or period of time for each disclosure where the actual date is not known. The approximate date would need to include a month and year or a description of when the

disclosure occurred in order for the individual to readily determine the approximate month and year of disclosure. Second, while the name of the entity or individual receiving the PHI must be included in the accounting, such information would be omitted from the accounting when the name of the recipient would result if a disclosure of PHI about another individual. "For example, if a physician's office mistakenly sends an appointment reminder to the wrong patient." Third, it is proposed that the language regarding the description of the PHI discloses and the purpose of the disclosure be modified **from** "a brief description of the protected health information disclosed" **to** "a brief description of the *type* of protected health information disclosed." Fourth, modification to language is proposed to make it clear that a minimum description is sufficient if it reasonable informs the individual of the purpose. The OCR states: "We are proposing to change the current language from ''statement'' to ''description'' to make clear that only a minimum description is required if it reasonably informs the individual of the purpose. For example, ''for public health'' or ''in response to law enforcement request'' is sufficient." Finally, it is proposed that covered entities be required to give individuals the option to limit the accounting request to a particular time period, type of disclosure or recipient.

- **Revisions to the requirements on how accounting of disclosures is provided in relation to timeframes, form of request and permissible charges for request.** The OCR proposes the three following modifications: First, decrease the permissible timeframe for response from the current 60 days to 30 days (with an additional 30-day extension as is currently permitted). Second, require covered entities to provide individuals with the accounting in the form (paper or electronic) requested by the individual. For example, a specified software application. Third, covered entitled may require the individual to submit the request in writing. Covered entitles would (as they are now) not allowed to charge individuals for the first request for an accounting in a 12-month period, but permit reasonable, cost based charges for subsequent accounting requests.

- **Revise the documentation requirements for accounting of disclosures**. Under the current rules, a covered entity must maintain documentation to provide an accounting of disclosures for six years prior to request. In addition, the covered entity must maintain the written accounting that it provided and the designation of the person or offices responsible for receiving and processing accounting requests. Two modifications are proposed. First, to require covered entities to maintain documentation necessary to provide an accounting of disclosures for three years (rather the six). Second, modify the current rules to clarify that a covered entity must retain a *copy* of the accounting provided to the individual rather than the original accounting document itself.

Access Report

- **Provide individuals with a right to access report documenting who has accessed an individual's electronic designated record set information.** This proposed rule would expand this right (1) to all uses and disclosures (as opposed to just disclosures) including disclosures for treatment, payment and health care operations, and (2) to all electronic PHI in a designated record set, rather than only in an EHR. The proposal extends the right to an access report to all covered entities and business associates that maintain electronic designated record set information, rather than those covered entities that maintain PHI in an EHR. The OCR proposes that a covered entity would include in its access report information from business associates that handle designated record set information, rather than providing an individual with a list of business associates as provided for under HITECH.

- **It is proposed by the OCR that the access report contain the following elements:**
  - Date of the access.
  - Time of access.
  - Name of the individual (if available) or the name of the entity, which accessed the electronic designated record set.
  - If available, a description of what information was accessed.
  - Description of the action (e.g. create, modify, delete) by the user, if available.

An access report (unlike a disclosure accounting) would not include the address of the user or a brief statement of the purpose of the disclosure as this information is generally not contained in an access log. However, it is proposed that covered entities be required to provide individuals with an option to limit the access report to a specific date, time period or person.

- **It is proposed that the same timing requirements for the provision of access report as is proposed for an accounting of disclosures.** Specifically, a covered entity would have 30 days (with a one time extension of 30 days) to provide an access report and must be provided in the form and format requested by the individual, if "readily producible in the requested form and format." A covered entity may not charge an individual for the provision of an access form in a 12-month period, but may charge fees for subsequent access reports during the same 12-month period. However, the individual must be advises at the time of first and subsequent requests that subsequent fees are subject to a fee and the individual must be allowed to withdraw the request to avoid the fee. Additionally, if the covered entity advises the individual as such, a covered entity may mandate an individual to request access report requests in writing.

- **The same documentation requirement for disclosure account is proposed for access reports.** Covered entities and business associates would be required to retain documentation needed to produce an access report for three years. The covered entity must retain for six years copies of access reports that were provided to individuals and must maintain a designation of the persons or offices responsible for receiving and processing requests for access reports for six years.

- **It is proposed that the Notice of Privacy Practices (Notice) required under HIPAA be modified to include a statement of the individual's right to request and obtain an access report.** This proposed modification to the Notice, if adopted, would be considered a material change requiring a covered entity to revise and distribute the modified Notice within 60 days of the effective date of the change.

The OCR proposes that "covered entities and business associates will be required to comply with the revised accounting of disclosures provision by no later than 180 days after the effective date of the final rule. The effective date of the final rule will be 60 days after publication in the Federal Register, so covered entities and business associates will have 240 days after publication of the final rule to come into compliance."

It is proposed that "covered entities and business associates be required to produce an access report upon request beginning January 1, 2013, for any electronic designated record set systems that were acquired after January 1, 2009."

For a copy of the OCR proposal, please click on the link provided below.

http://www.gpo.gov/fdsys/pkg/FR-2011-05-31/pdf/2011-13297.pdf

IRS RELEASES 2012 HSA LIMITS

On May 13, 2010, the Internal Revenue Service (IRS) via Revenue Procedure 2011-32, released inflation-adjusted health savings account (HSA) contributions and high-deductible health plan (HDHP) limitations for calendar year 2012.

These limits are indexed for inflation and released annually by June 1 for the following year as established under the Tax Relief and Health Care Act of 2006.

There are no changes in the annual deductibles from the amounts provided for 2011 for purposes of determining a "high deductible health plan," but the out-of-pocket expenses are adjusted upward for 2012.

2012 annual HSA contribution limits:

Self-only HDHP coverage: $3,100 (up $50 from 2011)
Family HDHP coverage: $6,250 (up $100 from 2011)

2012 annual HDHP minimum deductibles:

Self-only coverage: $1,200 (up $0 from 2011)
Family coverage: $2,400 (up $0 from 2011)

2012 annual HDHP maximum out-of-pocket:

Self-only coverage: $6,050 (up $100 from 2011)
Family coverage: $12,100 (up $200 from 2011)

Catch-up contributions for individuals who are age 55 or older will remain at $1,000 for 2012.

For a copy of Revenue Procedure 2011-32 please click on the link provided below.

http://www.irs.gov/pub/irs-drop/rp-11-32.pdf

TAX EQUITY LEGISLATION INTRODUCED

On June 2, 2011, Jim McDermott (D-WA) introduced in the United States House of Representatives legislation to extend the tax exclusion from gross income for employer-provided health coverage to other eligible designated beneficiaries of employee's coverage. Currently the tax exclusion is only provided to employee's spouses, children and tax dependents.

Specifically, the Tax Parity for Health Plan Beneficiaries Act (H.R. 2088) would revise the tax treatment of health coverage for employees' non-spouse, and/or non-dependent beneficiaries for the purposes of employer-provided health insurance, the self-employed deduction for health premiums, pre-tax cafeteria plan elections, voluntary employee beneficiary associations, account-based health plans (such as health reimbursement arrangements, health flexible spending arrangements or health savings accounts) and payroll tax obligations. H.R. 2088 does not impose any mandates on employers and would extend the beneficial tax treatment only to those beneficiaries eligible under the employer plan.

For a copy of H.R. 2088, please click on the link provided below.

http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=112_cong_bills&docid=f:h2088ih.txt.pdf

DELAWARE ENACTS CIVIL UNION LAW

On May 11, 2011, Delaware Governor Jack Markell signed into law legislation (Senate Bill 30) allowing same-sex civil unions and fully recognizing same-sex relationships.

Senate Bill 30 provides that parties to a civil union are to enjoy the same rights, protections and obligations that exist for married persons such as hospital visitation rights, property and last will and testament transfers, the ability to live together in nursing homes, joint adoption, and other legal issues.

Also under the bill, Delaware recognizes legal relationships that same-sex couples enter into in another jurisdiction – whether it is a civil union or marriage – and treat the relationship as a civil union.

For a copy of Delaware Senate Bill 30, please click on the link provided below.

http://legis.delaware.gov/LIS/lis146.nsf/vwLegislation/SB+30/$file/legis.html?open

REVISED STANDARD CHILD SUPPORT WITHHOLDING ORDER RELEASED

The Office of Child Support Enforcement (OCSE) has a released an updated version of the Income Withholding for Support (IWO). The IWO serves as an order to withhold for the support of a child when issued by a state or tribal child support (CSE) agency, a court, or an attorney authorized by state law to issue child support withholding orders.

Key changes to the IWO Form include the following:

Elimination of shading – Shading of sections has been removed because vital information was obscured when the IWO was faxed to employers resulting in employers needing to contact the state and request clarification of the IWO.

Requirement of underlying order – The note on page 1 has been clarified to provide that a copy of the underlying withholding order must be attached if an employer receives the IWO from someone other than a state or tribal CSE agency or court.

Remittance identifier - In order to prominently display the remittance identifier, this information has been moved above the order and case identifiers on page 1.

Checkbox for employer returns - A checkbox has been added to page 2 for the employer to indicate that the IWO is being returned because it does not direct payments to the state disbursement unit (SDU) or is not regular on its face. Instructions for this box are located on page 2, under "Payments to SDU."

Employment termination section - The notification of employment termination section on page 3 has been expanded to include change in income status.

Key changes to the IWO Instructions include the following:

When IWO must be rejected and returned - The Instructions have been revised to indicate the circumstances under which an IWO must be rejected and returned to sender, under "Note to Employer/Income Withholder."

New IWOs - For an IWO issued on or after May 31, 2011:

IWO not directed to SDU – Effective immediately, the employer should reject the IWO and return to sender.

OMB-approved IWO form not used - Effective May 31, 2012, the employer must reject a document to withhold income that is not issued on the OMB-approved IWO and return to sender.

Existing IWOs – For IWOs already processed by an employer and issued before May 31, 2011:

IWO not directed to SDU – Employers should contact the CSE agency in the state that issued the underlying support order on a case-by-case basis to request a revised IWO directing payment to the SDU. The employer should continue to send payments to the non-SDU address until the state CSE agency or sender issues a revised IWO directing payment to the SDU.

OMB-approved IWO form not used - The employer should contact the sender to request an OMB-approved IWO if the document presents a problem for the employer such as insufficient information or the order has been modified. The employer should continue withholding until a new OMB-approved IWO is received.

For a copy of the revised IWO Form, please click on the link provided below.

http://www.acf.hhs.gov/programs/cse/forms/OMB-0970-0154.pdf

For a copy of the IWO Instructions, please click on the link provided below.

http://www.acf.hhs.gov/programs/cse/forms/OMB-0970-0154_instructions.pdf

IRS RELEASES DRAFT OF 2012 FORM W-2

The Internal Revenue Service (IRS) has released a draft version of the 2012 Form W-2, "Wage and Tax Statement" which include a few minor changes to the Instructions as follows:

Code DD instructions highlighted – The cost of employer-sponsored health coverage (back of Copy B) in the Notice to Employee is now highlighted with a red box. In addition, the parenthetical "(if such cost is provided by the employer)" has been deleted. The description of Code DD in the Instructions is also now highlighted with a red box although the description itself has not been modified.

Privacy Act notice removed – The Privacy Act and Paperwork Reduction Act Notice in the lower right hand corner of Copy A (page 1) and Copy D (page 9) now provides as follows: "see separate instructions" (formerly "see back of Copy D"). The Privacy Act itself has been removed from the instructions included with the form.

Reference to Social Security Statement outdated – In the Note at the end of the Instructions for Employee (back of Copy 2), there is a statement asking employees to

compare the social security and Medicare wages on their Form W-2 to the information shown on their annual Social Security Statement. However, the Social Security Administration (SSA) recently announced that it would no longer be sending out such statements as a cost cutting measure and that employee should compare the figures on the SSA website.

For a copy of the 2012 Form W-2 draft and Instructions, please click on the link provided below.

http://www.irs.gov/pub/irs-dft/fw2--dft.pdf

INDIANA CONFORMS TO AMENDED INTERNAL REVENUE CODE

As a result of the enactment of Indiana House Bill 1001, Indiana now conforms to the Internal Revenue Code (IRC) in effect as of January 1, 2011. **Consequently, Indiana conforms to federal tax treatment of health care benefits for children of employees who have not attained the age of 27 by the end of the tax year.** As noted in previous editions of Tech Flex, effective March 30, 2010, the IRC was amended, as a result of health care reform, to provide that the general exclusion from income in relation to federal income tax for medical expense reimbursements under an employer provided accident or health plan is extended to any child of an employee who has not attained age 27 as of the end of the taxable year.

However, there are a number of states whose revenue code was not modified to conform to the amended IRC. Consequently, the value of the benefits provided by the employer to the employee's child could be taxable to the employee for state income tax purposes although excluded in relation to federal taxes.

Indiana HB 1001 amended Indiana Code Section 6-3-1-11 as follows. (The added language is shown in **bold** while the deleted language is struck through.)

> SOURCE: IC 6-3-1-11; (11) PD4580.51. --> SECTION 84. IC 6-3-1-11, AS AMENDED BY P.L.113-2010, SECTION 54, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2011 (RETROACTIVE)]: Sec. 11. (a) **Except as provided in subsection (d),** the term "Internal Revenue Code" means the Internal Revenue Code of 1986 of the United States as amended and in effect on January 1, ~~2010.~~ **2011.**
>
> (b) Whenever the Internal Revenue Code is mentioned in this article, the particular provisions that are referred to, together with all the other provisions of the Internal Revenue Code in effect on January 1, ~~2010,~~ **2011,** that pertain to the provisions specifically mentioned, shall be regarded as incorporated in this article by reference and have the same force and effect as though fully set forth in this article. To the extent the provisions apply to this article, regulations adopted under Section 7805(a) of the Internal Revenue Code and in effect on January 1, ~~2010,~~ **2011,** shall be regarded as rules adopted by the department under this article, unless the department adopts

specific rules that supersede the regulation.

(c) An amendment to the Internal Revenue Code made by an act passed by Congress before January 1, ~~2010,~~ **2011,** that is effective for any taxable year that began before January 1, ~~2010,~~ **2011,** and that affects:

(1) individual adjusted gross income (as defined in Section 62 of the Internal Revenue Code);

(2) corporate taxable income (as defined in Section 63 of the Internal Revenue Code);

(3) trust and estate taxable income (as defined in Section 641(b) of the Internal Revenue Code);

(4) life insurance company taxable income (as defined in Section 801(b) of the Internal Revenue Code);

(5) mutual insurance company taxable income (as defined in Section 821(b) of the Internal Revenue Code); or

(6) taxable income (as defined in Section 832 of the Internal Revenue Code); is also effective for that same taxable year for purposes of determining adjusted gross income under section 3.5 of this chapter.

(d) The following provisions of the Internal Revenue Code that were amended by the Tax Relief Act, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (P.L. 111-312) are treated as though they were not amended by the Tax Relief Act, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (P.L. 111-312):

(1) Section 1367(a)(2) of the Internal Revenue Code pertaining to an adjustment of basis of the stock of shareholders.

(2) Section 871(k)(1)(c) and 871(k)(2)(C) of the Internal Revenue Code pertaining the treatment of certain dividends of regulated investment companies.

(3) Section 897(h)(4)(A)(ii) of the Internal Revenue Code pertaining to regulated investment companies qualified entity treatment.

(4) Section 512(b)(13)(E)(iv) of the Internal Revenue Code pertaining to the modification of tax treatment of certain payments to controlling exempt organizations.

(5) Section 613A(c)(6)(H)(ii) of the Internal Revenue Code pertaining to the limitations on percentage depletion in the case of oil and gas wells.

(6) Section 451(i)(3) of the Internal Revenue Code pertaining to special rule for sales or dispositions to implement Federal Energy Regulatory Commission or state electric restructuring policy for qualified electric utilities.

(7) Section 954(c)(6) of the Internal Revenue Code pertaining to the look-through treatment of payments between related controlled foreign corporation under foreign personal holding company rules.

The department shall develop forms and adopt any necessary rules under IC 4-22-2 to implement this subsection.

For a copy of Indiana HB 1001, please click on the link provided below:

http://www.in.gov/legislative/bills/2011/HE/HE1001.1.html

MASSACHUSETTS CONFORMS TO AMENDED IRC

As a result of the enactment of Massachusetts House Bill 3318, for tax years commencing on or after January 1, 2010, Massachusetts is adhering to the current version of the Internal Revenue Code regarding the exclusions from gross income for employer-provided health care benefits.

Consequently, Massachusetts now conforms to the federal tax treatment of health care benefits provided by an employer to an employee's child who has not attained the age of 27 at the end of the tax year.

Massachusetts House Bill 3318 Sections 7 and 56 amended ALM GL ch. 62, § 1 as follows:

[*7] SECTION 7. Section 1 of chapter 62 of the General Laws is hereby amended by inserting after the figure "72", as appearing in the 2008 Official Edition, the following figures:- , 105, 106.

[*56] SECTION 56. Sections 7, 8, 24 and 25 shall be effective for tax years beginning on or after January 1, 2010.

As a result, Massachusetts statute ALM GL ch. 62, § 1 now reads:

(c) "Code", the Internal Revenue Code of the United States, as amended on January 1, 2005 and in effect for the taxable year; **but Code shall mean the Code as amended and in effect for the taxable year for sections** 62(a)(1), 72, **105, 106,** 139C, 223, 274(m), 274(n), 401 through 420, inclusive, 457, 529, 530, 3401 and 3405 but excluding sections 402A and 408(q).

For a copy of MA HB 3318, please click on the link provided below. See Sections 7 and 56.

http://www.malegislature.gov/Laws/SessionLaws/Acts/2011/Chapter9

MASSACHUSETTS AMENDS CREDITOR GARNISHMENT LIMITS

As a result of the enactment of Massachusetts S.B. 2557, effective April 7, 2011, the weekly amount exempt from withholding for a creditor garnishment is the greater of; (1) 85% of the employee's gross wages; or 50 times the greater of the federal minimum wage ($7.25 per hour) or the Massachusetts minimum wages ($8.00 per hour). Prior to the enactment and effective date of S.B. 2557, $125.00 of an employee's weekly wages were exempt from creditor garnishment withholding.

For a copy of MA S.B. 2557, please click on the link provided below.

http://www.malegislature.gov/Laws/SessionLaws/Acts/2010/Chapter431/print

TENNESSEE AMENDS WAGE PAYMENT LAW

As a result of the enactment of HB 1819, the Tennessee wage payment law has been amended to allow an employer to offset an employee's wages if the employee owes the employer money that the employer loaned or advanced the employee, in certain situations.

Specifically HB 1819 allows an employer to offset an employee's wages due and owing for an amount the employee owes the employer if:

(1) An employer enters into an agreement with an employee to advance the employee wages prior to the date the wages are due and owing, agrees to otherwise lend the employee money, or permits the employee to charge personal items on the business or corporate credit card issued to the employee;

(2) The employee signs a written agreement prior to any actions occurring pursuant to (1) allowing the employer to offset the employee's wages for any amount the employee owes the employer, and the employer has in its possession at the time of the offset a copy of such signed agreement;

(3) The employer notifies the employee in writing 14 days prior to the payment of wages due and owing that: there is an amount the employee owes the employer; the employee's wages may be offset if the amount owed is not paid prior to the payment of wages due and owing; and the employee may submit an affidavit as described below; and

(4) The employee has not paid the amount owed the employer that was described in the notice sent pursuant to (3).

The employer is not entitled to offset an employee's wages due and owing if the employee sends a sworn affidavit to the employer, and a copy of such affidavit to the Tennessee Department of Labor and Workforce Development, no later than seven days after receiving notification from the employer, contesting the amount owed. If an employee contests an amount owed, the employer may commence an appropriate civil action to recover the amount the employer alleges that the employee owes the employer.

For a copy of HB 1819, please click on the link provided below.

http://www.capitol.tn.gov/Bills/107/Bill/HB1819.pdf

WEST VIRGINIA REQUIRES NOTIFICATION OF BONUS PAY

Effective June 12, 2011, West Virginia requires all employers to notify the Bureau of Child Support Enforcement (BCSE) two weeks prior to issuing employee bonuses of $100 or more to any employee for whom an income withholding for child support is in effect. The employers must inform the BCSE of the employee's name, the last four digits of that employee's Social Security number, and the amount of the bonus.

This information can be relayed to the BCSE electronically at www.dhhr.wv.gov/bcse/erc, fax at 304-558-1487, or by telephone at 800-835-4683 (or 304-558-1134 in Kanawha County).

WISCONSIN ENACTS UNIFORM LEAVE PROVISION

With the enactment of Senate Bill 23 (SB 23), Wisconsin has become the first state to pass a law preempting local laws providing family and medical leave. The preamble to SB 23 stated in part the following:

> "The legislature finds that the provision of family and medical leave that is uniform throughout the state is a matter of statewide concern and that the enactment of an ordinance by a city, village, town, or county that requires employers to provide employees with leave from employment, paid or unpaid, for any of the reasons specified in par. (c) would be logically inconsistent with, would defeat the purpose of, and would go against the spirit of this section. Therefore, this section shall be construed as an enactment of statewide concern for the purpose of providing family and medical leave that is uniform throughout the state."

As a result of the enactment of SB 23, the Milwaukee Paid Sick Leave Ordinance, which allowed full time employees to accrue up to nine paid sick days per year, is now void.

For a copy of WI SB 23, please click on the link below.

http://legis.wisconsin.gov/2011/data/acts/11Act16.pdf

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